IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.W.P. No. 389 of 1989
Date of decision: November 14,2007

Dr. Hardeep Singh V. State of Punjab and others

CORAM: HON'BLE MR.JUSTICE SHAM SUNDER

Present: Ms. Deipa Asdhir Dubey,Advocate
for the petitioner.
Mr. B.S.Chahal,AAG, Punjab for respondents
No.1 and 2.
Mr. D.S.Nehra, Senior Advocate with Ms.Amandeep
Kaur, Advocate for respondent No.3.

Sham Sunder,J.

The instant writ petition has been filed by the petitioner for quashing the order dated 2,9,1988 (Annexure P/9), vide which he was dismissed from service. Prayer for issuance of writ of mandamus directing the respondents to regularise the services of the petitioner since August,1980 with consequential benefits of pay and allowances, was also made.

2. The petitioner was selected as P.C.M.S.II, and appointed as Doctor by respondent No.1. He joined, as such, at Canal Hospital Talwara on 26.12.1967, under respondent No.3 and served there upto 31.8.1980. On 29.8.1980, respondent No.3, at the instance of Principal Medical Officer,namely, B.S.Handa, unilaterally issued the transfer orders of the petitioner vide letter of the even date (Annexure P/1). The petitioner was directed to report for duty to respondent No.2 for further posting orders. It was stated that the petitioner was on causal leave with effect from 28.8.1980 to

attend to his ailing mother and his posting order was issued during this period. The petitioner was forcibly relieved of his duties by making local arrangement with effect from 31.8.1980, though, the transfer order referred to hereinbefore was not served upon him. It was further stated that, as per the policy of the Beas Construction Board where the petitioner was employed, repatriation order could not be passed, without getting the posting orders of the petitioner from respondents No.1 and 2. Respondent No.3 did not obtain any sanction, from the Central/Punjab Government, before passing the order dated 29.8.1980 (Annexure P/1). It was further stated that due to further deterioration, in the health of the mother of the petitioner, he had to extend his leave till May,1981. Respondent No.1 was informed by the petitioner, vide application dated 12.5.1981 (Annexure P/2), that his mother had regained her health, for which he had to extend his leave, and requested him to issue his posting orders, so as to enable him to join his duties. It was further stated that the petitioner was surprised to find a public notice issued by respondent No.1, in a Punjabi Newspaper dated 17.5.1981, the true translation whereof is Annexure P/3, vide which he was charge sheeted levelling three charges of wilful absence, from duty, with effect from 29.8.1980, refusal to accept the transfer orders; and disobedience to the orders of higher authorities. The petitioner was asked by respondent No.1 to submit his reply to the aforesaid charge sheet, within 15 days, from the date of publication of the notice, annexure P/3. It was further stated that the petitioner was never informed before or after the publication of the aforesaid notice, as to whether, his request for extension of leave was accepted or rejected. In response to notice Annexure P/3, the petitioner sent a detailed reply dated 26.5.1981, to respondent No.1. He also submitted a

representation, copy whereof is appended as Annexure P/4 with the petition. He denied all the charges, levelled against him, in the charge sheet. It was further stated that the reply filed by the petitioner was found to be satisfactory by respondent No.1, as a result whereof, his services were put at the disposal of Civil Surgeon, Gurdaspur. It was further stated that unfortunately, he was again posted under Dr. B.S.Handa, Civil Surgeon, Gurdaspur, who was the Principal Medical Officer at Canal Hospital,Talwara and was instrumental, in getting the repatriation of the petitioner to his parent State. Dr. B.S.Handa was biased against the petitioner as he (petitioner) refused to attend to his unofficial duties assigned by him. The petitioner, thus, did not find it safe to serve under Dr. B.S.Handa, and apprehended that his career will be spoiled by him. The petitioner requested respondent No.1 to post him at Canal Hospital Talwara, or at any other place near Talwara in District Hoshiarpur, due to the continuous ill-health of his mother. His request for posting in District Hoshiarpur, was rejected, and he was directed to join duty at Gurdaspur. The petitioner received a letter dated 30.101984 from the Deputy Director, Health Services, Punjab Chandigarh, that he (Deputy Director) had been appointed as Enquiry Officer to hold an enquiry into the charges levelled against him (petitioner). The petitioner was asked to appear before the Enquiry Officer on 6.11.1984 at 2.00 p.m. However, as the letter was received by the petitioner after the expiry of date fixed for hearing, the petitioner made a request to fix some other date. The petitioner was then asked to appear on 30.11.1984 before the Enquiry Officer. On this date he appeared before the Enquiry Officer. The Enquiry Officer proceeded with the enquiry without affording the petitioner facility of defence counsel in violation of the principles of natural

justice. The Enquiry Officer held the petitioner guilty of the charges levelled against him in the charge sheet. Show cause notice dated 4.3.1985, was served upon the petitioner. The petitioner filed a representation dated 15.3.1985 (Annexure P/8) to the show cause notice. The petitioner also asked for personal hearing. He was,however, not afforded an opportunity of personal hearing. Ultimately he was dismissed from service, vide order dated 2.9.1988 (Annexure P/9). It was further stated that the said order was illegal, without jurisdiction,arbitrary, void and against the principles of natural justice. Accordingly, the prayer referred to in para 1 above, was made.

3. In the written statement, the respondents admitted the appointment of the petitioner and his joining in Canal Hospital on 20.3.1968.It was denied that he joined on 26.12.1967. It was stated that during August,1980, the petitioner was posted in Beas Dam Project Talwara. He was repatriated by the Beas Dam authorities and directed to report for duty to respondent No.2. It was further stated that as per the terms and conditions of deputation, the petitioner could be repatriated without notice. It was further stated that the petitioner was relieved of his duties, but he refused to receive the order of his repatriation. He remained absent from duty with effect from 29.8.1980, in an unauthorised manner. Accordingly, charge sheet vide order dated 24.11.1980, was sent to the petitioner, which was received back undelivered. Thereafter, a public notice was issued, in the newspaper. The petitioner submitted representation to the charge sheet. After considering his representation, he was allowed to join his duty without prejudice to the departmental proceedings vide order dated 25.3.1983. The petitioner did not join his duties and requested for his posting in

Canal Hospital Talwara or in District Hoshiarpur. His representation for transfer to Talwara or District Hoshiarpur, was rejected due to the exigencies of service. It was further stated that the Enquiry Officer was appointed. During the course of enquiry, full opportunity was afforded to the petitioner to cross-examine the witnesses, and lead his defence. The Enquiry Officer held the petitioner guilty of the charges, levelled against him, in the charge sheet. Ultimately, show cause notice, was served upon him. He filed representation. After obtaining the approval of the Punjab Public Service Commission, the petitioner was dismissed from service on account of grave misconduct , vide the order referred to hereinbefore.

4. I have heard the learned counsel for the parties and have gone through the record of the case, carefully.

5. The learned counsel for the petitioner, at the very outset, vehemently contended that the petitioner was repatriated, to his parent department, without obtaining the sanction, from the competent authority and, as such, his repatriation was illegal. It was further contended by her, that no effective opportunity, was afforded to the petitioner, to cross-examine the witnesses, and lead his defence evidence, in the enquiry proceedings. It was further contended that the absence of the petitioner was neither wilful nor deliberate, but was on account of the illness of his mother. It was further contended that no show cause notice was served upon the petitioner to submit his representation, to the imposition of proposed penalty of dismissal and, as such, he was condemned unheard. In the alternative, the counsel for the petitioner, also contended that the punishment imposed upon the petitioner, was not commensurate, with the alleged misconduct committed by him, and, as such, the order dated 2.9.1988 (Annexure P/9) vide which the petitioner was

dismissed from service was liable to substituted with lesser penalty.

6. On the contrary, the learned counsel for the respondents, contended that the long absence of the petitioner for about 8 years was wilful and deliberate. They further contended that the petitioner was repatriated to his parent State, in accordance with the terms and conditions of his deputation. It was further contended that full opportunity of cross-examining the witnesses, and lead defence evidence, was afforded to the petitioner, during the course of enquiry proceedings. Even show cause notice was served upon him, to which he filed reply and after due consideration and obtaining the approval of the Public Public Service Commission, he was dismissed from service, vide order referred to above. It was further contended that the impugned order is legal and valid.

7. There is, no dispute, about the factum, that the petitioner was selected as P.C.M.S.II and appointed as Doctor, by respondent No.1. The petitioner joined, as such, at Canal Hospital Talwara on 26.12.1967. It is also established from Annexure P/1, that vide order dated 29.8.1980, the services of the petitioner were repatriated and he was directed to report to the Director,Health Services Punjab, Chandigarh. He was relieved of his duty on 31.8.1980. It is evident from the enquiry report that no leave from 29.8.1980 to 31.8.1980 and thereafter upto the conclusion of enquiry was sanctioned to him. However, the petitioner instead of reporting to the Director, Health Services, Punjab, absented from duty on the plea of illness of his mother. The petitioner, thus, remained wilfully absent, from duty, from 29.8.1980 till the passing of the order annexure P/9. He also refused to accept the order of transfer, and, as such, did not obey the orders of the superior officers. When the charge sheet for the acts of omission and commission, could not be served upon the

petitioner, as he was absent from duty, a public notice dated 17.5.1981 (Annexure P/3) was published, in the newspaper. The petitioner submitted representation dated 26.5.1981 (Annexure P/4). Vide order dated 25.3.1983 (Annexure P/5) he was directed to join his duty and he was allocated to District Gurdaspur. It was further directed that he would be considered present from the date of his joining. Instead of joining his duty, the petitioner filed a representation, Annexure P/6, to the Chief Minister, Punjab which was rejected. Ultimately, vide letter dated 4.3.1985, the Enquiry Officer was appointed. It is evident from the translated copy of the Enquiry report (Annexure R/1) that during the course of enquiry, the petitioner was afforded an opportunity to cross-examine the witnesses but he refused to cross-examine them. He was also afforded an opportunity to lead his defence evidence. Ultimately, the Enquiry Officer, vide report, translated copy whereof is Annexure R/1, found him guilty of the charges, levelled against him, in the enquiry report. It is evident from Annexure P/9, order dated 2.9.1988, that a show cause notice proposing the penalty of dismissal was served upon the petitioner. He filed representation, to the same. The matter was referred to the Punjab Public Service Commission, for advice and, ultimately, the petitioner was dismissed from service, vide the aforesaid order. It is, therefore, evident that full opportunity of cross-examining the witnesses and leading his defence was afforded to the petitioner during the course of enquiry. If he did not cross-examine the witnesses despite affording an opportunity to do so he must thank his stars. . He was also given an opportunity, to lead defence evidence. In these circumstances, it cannot be said that the petitioner was condemned unheard. The submission of the learned counsel for the petitioner, to the effect, that the petitioner

was not afforded an opportunity of cross-examining the witnesses and lead his defence evidence, being devoid of merit, stands rejected.

8. The next contention of the learned counsel for the petitioner, to the effect, that the petitioner could not be unilaterally repatriated, is also devoid of merit. No material, has been placed, on record, to show that the competent authority could not repatriate the petitioner without notice. In paragraph 3 of the written statement, filed by respondents No.1 and 2, a specific plea was taken, by them, that, as per the terms of deputation, the petitioner could be repatriated without notice. No replication, was filed by the petitioner to the written statement. It is, thus, clear that the petitioner impliedly admitted the contents of paragraph 3 of the written statement, filed by the respondents. Therefore, in my opinion, the petitioner was rightly repatriated to his parent State, vide order dated 29.8.1980 (Annexure P/1).

9. The next contention of the learned counsel for the petitioner to the effect, that no show cause notice, was served upon the petitioner, before imposition of penalty of dismissal, is also devoid of merit, and deserves to be rejected. It is evident from the order dated 2.9.1988 (Annexure P/9) that after the receipt of enquiry report, a show cause notice proposing the penalty of dismissal, was served upon the petitioner. He also filed a representation, to the said show cause notice. This fact was also admitted by the petitioner, in the writ petition. The matter was referred to the Punjab Public Service Commission for advice. Thereafter, finding that the misconduct of the petitioner namely, remaining wilfully absent from duty from 29.8.1980 onwards till the passing of order dated 2.9.1988; his refusal to accept the orders of

transfer, and obey the orders of the senior officers, was grave in nature that he was dismissed from service. In this view of the matter, the contention of the learned counsel for the petitioner, is also rejected.

10. The next contention of the learned counsel for the petitioner that the order is non-speaking and no effective opportunity of hearing before passing the order dated 2.9.1988 (Annexure P/9) was granted, is also devoid of merit. As stated hereinbefore, show cause notice (Annexure P/7) along with the copy of the report of the Enquiry Officer was served upon the petitioner, provisionally proposing to impose penalty of dismissal. In pursuance of the show cause notice, reply/representation (Anneure P/8) was sent by the petitioner, explaining therein as to why he remained absent. It may be stated here that since the disciplinary authority, agreed with the finding of the Enquiry officer, it was not required of it to record separate reasons, while passing the order dated 2.9.1988 (Annexure P/9). Even otherwise, whatever was stated by the petitioner, in his representation/reply (Annexure P/8) was duly considered by the Enquiry Officer, in the enquiry report Ex.R1 and negatived the question, whether the petitioner was on sanctioned leave, or wilfully absent from duty, was a matter of official record. This fact was duly proved, by the concerned Assistant, while appearing before the Enquiry Officer and was also within the knowledge of the petitioner right from the very beginning, His refusal to accept the transfer order, was proved from the report of Narinder Kumar, Peon, placed at pager 47 of the file. No specific instances of mala fides, or vindictiveness, against Dr. B.S.Handa, under whom the petitioner was working in Canal Hospital, are either mentioned in the representations, submitted by him, or in the writ petition. The

statutory Rules governing the petitioner, do not speak of grant of personal hearing to the delinquent before passing an order visiting him with penal consequences. Even in Union of India V. Tulsi Ram Patel A.I.R. 1985 S.C. 1416, the Apex Court, while answering the principal controversy in that case, held that the principle of audi alteram partem would have no application, in the face of the doctrine of pleasure embodied under Articles 310 and 311 of the Constitution of India and more particularly in view of the second proviso of Clause 'C' of Article 311(2) of the Constitution. In this view of the matter, no help can be drawn, by the counsel for the petitioner from Ram Niwas Bansal V. State Bank of Patiala 1998(2) P.L.R. 768 (FB) (P&H), as the facts thereof are distinguishable from the facts of the present case. The two fold contention of the learned counsel for the petitioner, set out, at the beginning of this paragraph is, thus, rejected.

11. The next contention of the learned counsel for the petitioner, to the effect, that the punishment of dismissal is not commensurate with the misconduct, allegedly committed by the petitioner, is also devoid of merit. The charges levelled against the petitioner, in the charge sheet have been enumerated hereinbefore. The petitioner, being a responsible gazetted officer,was required to conduct himself in a manner, not unbecoming of a public servant. He remained absent from duty from 29.8.1980 onwards, till his dismissal from service continuously, wilfully and deliberately. So much so he even refused to accept his transfer orders and obey the orders of his superiors. The misconduct committed by the petitioner, was of grave nature, and the penalty of dismissal was eminently warranted, in the facts and circumstances of the case.

12. Reliance was placed, by the learned counsel for the

petitioner on Dev Singh V Punjab Tourism Development Corporation Ltd 2003(4) S.C.T. 249 and Ram Kishan V. Union of India and others 1996(1) RSJ 66 to contend that the punishment of dismissal imposed upon the petitioner, is harsh and disproportionate to the misconduct proved against him. In **Dev Singh's case** (supra) the charge against the delinquent, was merely of negligence, due to which an office file was misplaced, without any allegation of deliberate or malafide intention in misplacing the file, with any ulterior motive. In these circumstances, it was held by the Apex Court, that the punishment of dismissal, from service, was certainly shockingly disproportionate, to the proved guilt. In these circumstances, the punishment of stoppage of one increment, and one stage EB, with forfeiture of back wages, over and above suspension allowance, during suspension period, was substituted, in place of punishment of dismissal.

13. In **Ram Kishan's case** (supra), the appellant was found to have used abusive language. In these circumstances, imposition of punishment of dismissal, from service, was imposed upon the delinquent constable which was considered harsh and disproportionate to the gravity of charge, by the Apex Court, on the ground, that the nature of abusive language, used by the appellant, was not stated. Accordingly, the imposition of punishment of stoppage of two increments with cumulative effect, was substituted, in place of punishment of dismissal.

14. The facts of the aforesaid authorities are clearly distinguishable, from the facts of the present case. The court sitting in appeal or exercising the writ jurisdiction, against the punishment imposed in the disciplinary proceedings, will not normally substitute its own conclusion, on penalty. However, if the punishment imposed

by the disciplinary authority, or the appellate authority, shocks the conscience of the court, then it would appropriately mould the relief, either by directing the disciplinary/appropriate authority, to reconsider the penalty, imposed or to shorten the litigation, it may make an exception, in rare cases, and impose appropriate punishment, with cogent reasons, in support thereof. In the instant case, as stated above, the petitioner remained wilfully and deliberately absent from duty from 29.8.1980 onwards till the date of passing of order of dismissal on 2.9.1988, against him. Not only this, he also refused to accept the order of his transfer as also the charge sheet and, thus, disobeyed the orders of higher authorities. In the instant case, misconduct proved against the petitioner was of gravest nature. The punishment of dismissal, imposed upon him, therefore, could not be said to be harsh or shockingly disproportionate to the guilt proved. The penalty of dismissal, being eminently proportionate to the gravest misconduct, committed by the petitioner, it does not call for any substitution. Since the facts of the aforesaid authorities, are distinguishable, from the facts of the present case, no help can be drawn by the petitioner therefrom. The submission of leaned counsel for the petitioner is, accordingly, rejected.

15. In view of the reasons recorded hereinbefore, the writ petition is dismissed with costs.

November , 2007 (Sham Sunder)
sks Judge